

(b) State and county committees and their representatives and employees have no authority to modify or waive provisions of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. Further, the Executive Vice-President, CCC, or designee, may modify any deadline in this subpart to the extent doing so is determined to be appropriate and consistent with the purposes of the program.

(e) A representative of CCC may execute a contract for a transition payment only under the terms and conditions of this part, and as determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1463.102 Definitions.

The definitions in this section shall apply for all purposes of administering the Tobacco Transition Payment Program (TTPP) authorized by this subpart.

Act means the Fair and Equitable Tobacco Reform Act of 2004.

Actual marketings means tobacco that was disposed of in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons.

Actual undermarketings means the amount by which the effective quota is

more than the amount of tobacco marketed.

Assignee means the person designated by a tobacco quota holder or tobacco producer on the correct CCC form to receive a payment to be made by CCC under this subpart.

Assignor means the owner of a farm, or a producer on a farm, who has been determined by CCC to be eligible for a payment under this subpart and who has elected to assign to another person on the correct CCC form, the payment to be made by CCC under this subpart.

Average production yield means, for each kind of tobacco, other than burley (type 31) and flue-cured (types 11-14), the average of the production of a kind of tobacco in a county, on a per-acre basis, for the 2001, 2002, and 2003 crop years. For quota holders only, if no records are available to provide the average production of a kind of tobacco in a county, the average yield will be the production yield established by the National Agricultural Statistical Service of the Department of Agriculture (NASS) for the 2002 marketing year for the applicable kind of tobacco.

Basic allotment means the factored allotment plus and minus permanent adjustments.

Basic quota means the factored quota plus permanent adjustments.

Base Quota Level (BQL) means the payment pounds as determined under this subpart.

Calendar year means the twelve-months from January 1 through December 31.

Claim means any amount of money determined by any Federal agency to be owed by a tobacco quota holder or a tobacco producer to the United States, or any agency or instrumentality thereof, that has been the subject of a completed debt collection activity that is in compliance with the Debt Collection Improvement Act of 1996.

Considered planted means tobacco that was planted but failed to be produced as a result of a natural disaster, as determined by CCC.

Contract means a Tobacco Transition Payment Quota Holder Contract, a Tobacco Transition Payment Producer Contract, a Tobacco Transition Payment Quota Holder Successor In Interest Contract, or a Tobacco Transition

§ 1463.102

7 CFR Ch. XIV (1–1–08 Edition)

Payment Producer Successor In Interest Contract.

Contract payment means a payment made under a contract entered into under this subpart.

Dependent means an offspring child who is under 18 years of age.

Disaster lease means, as approved by FSA, a written transfer by lease under certain natural disaster conditions of flue-cured or burley tobacco when the transferring farm has suffered a loss of production due to drought, excessive rain, hail, wind, tornado, or other natural disasters. A disaster transfer of flue-cured tobacco must have occurred after June 30 and on or before November 15. A disaster transfer of burley tobacco must have occurred after July 1 and on or before February 16 of the following calendar year.

Effective allotment means the basic farm allotment plus or minus temporary adjustments.

Effective quota means the current year farm marketing quota plus or minus any temporary quota adjustments.

Effective undermarketings means the smaller of the actual undermarketings or the sum of the previous year's basic quota plus pounds of quota temporarily transferred to the farm for the previous year.

Eligible quota holder means only a person who, as of October 22, 2004, has either a fee simple interest or life estate interest in the farm for which FSA established a farm basic marketing quota for the 2004 marketing year. An eligible quota holder does not include any other person who: claims a lien, security interest or other similar equitable interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; has a remainder interest or any other contingent interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; or who may have caused any such marketing quota to have been transferred to the farm.

Eligible tobacco producer means an owner, operator, landlord, tenant, or sharecropper who shared in the risk of producing tobacco on a farm where tobacco was produced, or considered planted, pursuant to a tobacco poundage quota or acreage allotment as-

signed to the farm for the 2002, 2003 or 2004 marketing years and who otherwise meets the requirements in §1463.104.

Experimental tobacco means tobacco grown by or under the direction of a publicly-owned agricultural experiment station for experimental purposes.

Factored allotment means allotment that has been factored to equate it to the 2002 basic allotment level.

Factored quota means quota that has been factored to equate it to the 2002 basic quota level.

Family member means a parent; grandparent or other direct lineal ancestor; child or other direct lineal descendant; spouse; or sibling of a tobacco quota holder or tobacco producer.

Farm means a farm as defined in part 718 of this title.

Fiscal year means the twelve-month period from October 1 through September 30.

Marketing year means, for flue-cured tobacco, the period beginning July 1 of the current year and ending June 30 of the following year. For kinds of tobacco other than flue-cured, the period beginning October 1 of the current year and ending September 30 of the following year.

NASS means the National Agricultural Statistics Service of USDA.

New farm means a farm for which a basic marketing quota was established for the 2003 or 2004 year from the national reserve that is set aside for such purposes from the national marketing quota established for the applicable year for the kind of tobacco.

Overmarketings means the pounds by which the pounds marketed exceed the effective farm marketing quota.

Permanent quota adjustments means adjustments made by FSA under part 723 of this title for:

- (1) Old farm adjustments from reserve;
- (2) Pounds of quota transferred to the farm from the eminent domain pool;
- (3) Pounds of quota transferred to or from the farm by sale; or
- (4) Pounds of forfeited quota.

Secretary means the Secretary of the United States Department of Agriculture.

Share in the risk of production means having a direct financial interest in the successful production of a crop of tobacco through ownership of a direct share in the actual proceeds derived from the marketing of the crop, which share is conditional upon the success of that marketing.

Successor party means the means the person who has assumed all rights and obligations of a quota holder or tobacco producer arising under this part by executing a TTPP contract.

Temporary quota adjustments means adjustments made by FSA under part 723 of this title for:

- (1) Effective undermarketings;
- (2) Overmarketings from any prior year;
- (3) Reapportioned quota from quota released from farms in the eminent domain pool;
- (4) Quota transferred by lease or by owner, for all kinds of tobacco except flue-cured and cigar tobacco; except for flue-cured disaster lease;
- (5) Violations of the provisions of part 723 of this title and part 1464 of this chapter.

Tobacco means the following kinds of tobacco: Burley tobacco (type 31); cigar-filler and cigar binder tobacco (types 42, 43, 44, 53, 54, and 55); dark air-cured tobacco (types 35 and 36), fire-cured tobacco (types 21, 22 and 23); flue-cured tobacco (types 11, 12, 13 and 14); and Virginia sun-cured tobacco (type 37).

TTPP effective quota means effective quota plus or minus temporary adjustments because of disaster lease and transfer and before adjustment to the 2002 level for establishment of BQL.

United States includes any agency and instrumentality thereof.

§ 1463.103 Eligible quota holder.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible quota holder, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title, the controlled substance provisions of part 718 of this title, and the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible quota holder.

§ 1463.104 Eligible tobacco producer.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible tobacco producer, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title and the controlled substance provisions of part 718 of this title shall be applicable to payments made under this part to an eligible tobacco producer. However, the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible tobacco producer.

(c) For purposes of determining if an eligible tobacco producer has shared in the risk of producing a crop in the 2002, 2003, or 2004 crop years, CCC will consider evidence presented by a producer that includes, but is not limited to: written leases; contracts for the purchase of tobacco; crop insurance documents; or receipts for the purchase of items used in the production of tobacco.

§ 1463.105 Base quota levels for eligible quota holders.

(a) The BQL is determined separately for each kind of tobacco for each farm for which a 2004 basic marketing year quota was established under part 723 of this title. Any marketing quota assigned by FSA to a new farm in 2003 or 2004, other than through transfer from another farm, shall not be considered when determining the BQL.

(b) For burley tobacco quota holders BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.071295. (NOTE: The factor adjusts the 2004 basic quota to the 2002 basic quota level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owners.)

(c) For flue-cured tobacco quota holders the BQL is established according to the following table, except as adjusted under paragraph (e) of this section: